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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,484	12/31/2001	Cynthia M. Ciliberto	22788-AUSA	1720

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EXAMINER

HANDY, DWAYNE K

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 08/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/890,484

Applicant(s)

CILIBERTO ET AL.

Examiner

Dwayne K Handy

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 and 15-18 is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☒ Claim(s) 9-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 9-14 objected to because of the following informalities:

In the body of claim 9, applicant has referred to a membrane (lines 14 and 18) which has not been claimed in the body of the claim. Applicant has made a reference to the membrane in the preamble in the claim, but not in the body. Therefore, the Examiner is not required to give the membrane patentable weight in examining the claims against the prior art. If applicant wishes to include this element in the apparatus of claim 9, appropriate correction is required. In the form the claim is currently written, the Examiner searched for prior art which did not contain a membrane element.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Gioia (U.S. Pat. No. 4,274,286). Gioia teaches an apparatus for measuring the flowability of powder comprised of a container with an opening in the bottom. The apparatus is best shown in Figure 6 and has a cylindrical body (1) with open ends and an end cap (3) with an opening.

***Allowable Subject Matter***

4. Claims 1-8 and 15-18 are allowed.

Claims 10-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and are rewritten in a form which does not duplicate the elements of claims which have already been deemed allowable.

5. The following is a statement of reasons for the indication of allowable subject matter: In claim 1, applicant has claimed an apparatus with the following combination of elements: a tubular body with opposed ends, one of them being open; an end cap with a sidewall and a flange extending substantially perpendicularly inwardly from the cap to forming a support surface and also surrounding and defining an aperture, said end cap removably attached to the open end of the tubular body; a porous membranes positioned within the end cap on the support surface; and a ring sized to fit coaxially within the end cap contiguous with the membrane wherein the membrane is sandwiched between the end cap and the ring. The Examiner did not find prior art that contained or suggested this combination of features.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cosgrove, Jr. et al. (U.S. Pat. No. 4,578,244), Little et al.


Art Unit: 1743

(5,108,710), Fassihi (5,412,979), Lennox, Jr. et al. (4,464,340), Shah et al. (3,801,280), Bischoff et al. (3,802,272), Mehta et al. (4,856,909), Noormohammadi et al. (5,011,662), Brinker et al. (5,589,649), Martin et al. (5,816,701), Lee (6,336,739), Chaudhari et al. (4,681,858), and Viegas et al. (6,497,157) teach devices for dissolution testing. Price et al. (5,476,116) and Newhard (5,407,567) show pool chemical dispensers with features similar to applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K Handy whose telephone number is (703)-305-0211. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (703)-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700

dkh  
August 9, 2003